2024:PHHC:108670

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208/2

1. **CRM M-8480 of 2022**
Date of Decision: 20.08.2024

Ashu Jain ...Petitioner

Versus

State of Punjab ... Respondent

2. **CRM M-8706 of 2022**

Sonia Jain ...Petitioner

Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Kshitij Sharma, Advocate
for the petitioners.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. R.S. Bal, Advocate, for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. By way of this order, I shall dispose off two petitions, i.e., **CRM M-8480 of 2022** titled as **"Ashu Jain Vs. State of Punjab",** and **CRM M-8706 of 2022** titled as **"Sonia Jain Vs. State of Punjab",** whereby, the petitioners have prayed for grant of anticipatory bail to them in case FIR No.21 dated 21.01.2022

registered under Sections 420 and 120-B IPC at Police Station Haibowal, District Police Commissionerate Ludhiana.

2. The FIR in the present case was registered on the basis of the complaint submitted by Mukesh Kumar Sachdeva. As per the said complaint, Mukesh Kumar Sachdeva was the authorized person on behalf of Sachdeva Steels. Ashu Jain and Sonia Jain, both the petitioners in these petitions are directors and authorized signatories of Noble Steels Private Limited and are looking after the day to day affairs of the company. The Noble Steels Private Limited had been purchasing goods/scrap from the complainant/firm and the accused had made a false representation that they had the capacity of making the payment of the goods/scrap and had undertaken to clear the entire payment within 15 days from the date of supply of the goods. From 01.12.2020 to 01.05.2021, the accused purchased material from the complainant/firm and a total amount of Rs. 92,09,872/- alongwith interest at the rate of 24% per annum was outstanding against the accused. The material was received by the accused only after inducing the complainant/firm and after making a false representation regarding the financial capacity of the accused to pay for the scrap. The intention of both the accused was to cheat the complainant/firm since beginning and now the accused started putting off the complainant/firm on one pretext or the other as the accused had *malafide* intention since beginning. Even, the employees of the complainant/firm confronted the accused and they made false

assurances and also asked to supply more goods on credit again, in order to take the price of the same. After that Ashu Jain in consultation with Sonia Jain, both the petitioners had issued 14 cheques from the account of the company, namely, Noble Steels Private Limited and it was falsely represented that the cheques will be honoured as and when presented for encashment. However, when the cheques were presented by the complainant/firm for encashment, the cheques were returned dishonoured by the bankers with the remarks "payment stopped by the drawer", which clearly shows that the intention of both the petitioners was to cheat the complainant, from the very beginning and all the representations made by the accused were false and based on distorted facts. Now, the accused had stopped replying to the complainant/firm and they neither made the huge pending payment of the goods/scrap nor they were replying to any of the messages sent by the complainant/firm.

3. Learned counsel for the petitioners contends that the petitioners, being the Directors of Noble Steels Private Limited, have business dealings with the complainant/firm. Even, the complainant firm had supplied goods/scrap to Noble Steels Private Limited. In fact, the goods supplied by the complainant/firm were sub-standard and were not of the quality as assured by the complainant/firm. Still further, the complainant had unilaterally increased the price and had reduced the quality of material, by mixing lower quality of scrap. When the matter was taken up with the complainant/firm, they even

apologized for their conduct. However, the complainant did not properly settle the account with the petitioners and even misused the security cheques, which were handed over by the petitioners in good faith to the complainant.

4. Learned counsel for the petitioners further submits that even the petitioners had the intention to resolve the dispute with the complainant/firm amicably and the matter was repeatedly referred to the Mediation and Conciliation Centre of this Court as well. However, the complainant side did not cooperate with the petitioners and wanted to take undue advantage of the registration of the false case. Learned counsel further contends that in fact even from the admitted case of the prosecution, it is a case of civil liability, for which, both the parties have already availed their efficacious civil remedies. The complainant side got the criminal case registered primarily to arm twist the petitioners and to threaten them with pressure of arrest. Learned counsel further contends that in the present case, after the dishonour of the cheque, the proceedings under the provisions of the Negotiable Instruments Act 1881 were already initiated by the complainant in August 2021, whereas, the FIR in the present case was got registered by the complainant on 21.01.2022. Accordingly, even during the pendency of the criminal complaint, the present FIR was not maintainable on the same grounds. Still further, in the present case, the complainant had served a notice under Rule 5 of the IB Rules 2016 and the insolvency proceedings have already been

initiated against Noble Steels Private Limited and the NCLT, Chandigarh has already appointed an IRP in the matter and declared moratorium of two years. Apart from that, Ashu Jain, the petitioner has also applied for personal insolvency and bankruptcy proceedings and vide order dated 08.04.2024, IRP has been appointed in the said case as well. Learned counsel further contends that even Noble Steels Private Limited had instituted a Civil Suit-CS-542 of 2022 on 24.01.2022 against the complainant/firm, challenging the correctness of the amount charged against the supply of raw material and the said issue is a subject-matter of the FIR in the present case. Thus, it is apparent that a civil dispute has been illegally converted into a criminal offence. Learned counsel for the petitioners has placed reliance on the law laid down by the Hon'ble Supreme Court in the matter of ***G. Sagar Suri and another Vs. State of U.P. and others (2000) 2 Supreme Court Cases 636*** and ***Deepak Gaba Vs. State of Uttar Pradesh (SC) 2023 (3) SCC 423*** and submitted that they may be admitted to bail in the instant case.

5. On the other hand, learned State counsel submitted that the petitioners had joined the investigation, however, they were not cooperating with the Investigating Agency and the amount of more than Rs. 92 lacs is yet to be recovered from the petitioners.

6. Learned counsel for the complainant vehemently argued that the petitioners had cheated the complainant/firm to the tune of more than Rs. 92 lacs and they had the intention to cheat the

complainant from the very beginning. Even, the entire material ordered by the accused was supplied to them by the complainant, however, the payment was not made by the petitioners to the complainant/firm. Apart from that, the initiation of other proceedings would not mean that the custodial interrogation of the petitioners is not required in the present case. Thus, it was prayed that the present petition may be ordered to be dismissed by this Court.

7. I have heard learned counsel for the parties and perused the record.

8. From a bare perusal of record, it is apparent that the petitioners have already joined the investigation in the present case and the case primarily seems to be based on documentary evidence. Apart from that, in the present case, no doubt, the raw material/scrap was supplied by the complainant side to Noble Steels Private Limited. However, the complainant is yet to prove during the course of trial that the petitioners had the intention to cheat the complainant, from the very inception. It would be a moot point as to whether the petitioners had committed any offender under Section 420 IPC or not, which shall be determined only during the course of the trial. Still further, the petitioners had already joined the investigation and since the case is based on documentary evidence, the custodial interrogation of the petitioners may not be required any further. Apart from that, it is also apparent that both the sides have also availed their civil

remedies before different Courts of law and both the parties are yet to prove their respective versions.

9. Without commenting any further on the merits of the case, the present petitions are allowed. The petitioners are granted concession of anticipatory bail, subject to the conditions as provided under Section 438(2) of the Cr.P.C. It will be open for the Investigating Officer to call the petitioners to join investigation, if so required, by issuing a written notice in this regard and they shall abide by the conditions mentioned in Section 438(2) of the Cr.P.C.

20.08.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No